UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/750,475
Filing Date: December 28, 2000
Appellant(s): NGUYEN, LYNH

J. Warren Lytle, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/11/2007 appealing from the Office action mailed 11/14/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 1-5, 8-12 and 15-19 under 35 U.S.C. § 103(a) as being unpatentable over Polizzi et al (US 2002/0023158, "Polizzi," hereafter) in view of Mastors et al, U.S Patent No. 5.826.021 ["Mastors"] is withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 20020023158	Polizzi et al	2-2002
US 6134588	Guenthner et al	10-2000
US 5774660	Brendel et al	6-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1>   Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi et

al (US 2002/0023158, "Polizzi," hereafter) in view of Guenthner et al, U.S Patent No. 5.134.588

["Guenthner"].

2>   Regarding claims 1, 8 and 15, Polizzi discloses a method, apparatus and program

product (hereinafter a "system") comprising:

providing at least one interface module to interface with a remote application (105,

fig.1);

providing port module to interface between interface module and data source (agent,

130, fig. 1);

providing a connection manager to facilitate between the interface module and port

module (service broker 125 fig. 1; ¶ 21).

Polizzi does not explicitly disclose detecting unavailability and availability of a data source in response to a request and reconnecting to the data source when it becomes available.

However, a technique or concept of resource availability detection is not new, it has been around long prior to Appellant's invention was made. It has been utilized to improve efficiency of network data communications. For instance, Guenthner discloses detecting unavailability of a data source in response to a request for the data source [column 9 «lines 18-20»], dynamically detecting availability of the data source and reconnecting to the data source in response to a subsequent request [column 9 «lines 16-35»].

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to adapt the known technique as suggested by Guenthner with Polizzi for a client to detect the unavailability of a server but to be able to dynamically reconnect to the server when it is available again. One would have been motivated to provide such a combination to enhance a client's experience by ensuring availability of data sources [column 1 «lines 65-67»].

3>   Regarding claims 2-5, 9-12 and 16-17, Polizzi-Guenthner discloses, detecting unavailability is accomplish by software module executed in a computer. Polizzi-Guenthner does not explicitly call its software module as being specified by the claims language. However, applying the detection capability to any software module regardless of its nomenclature does not produce unexpected result and is an obvious variation of design choice. That is, having either the port module or the connection manager perform the

dynamic detection function leads to the same expected results which is evidence of obviousness. MPEP §716.02(II). Conversely, Appellant has not identified any unexpected result that would occur if the detection function is performed by the connection manager or the port module. MPEP §716.02.

4>   Regarding claims 6, 7, 13, 14, 18 and 19, Polizzi-Guenthner discloses, re-establishing a connection between the port module and the data source independently from initialization of the connection manager, i.e., without re-initializing the connection manager [see Guenthner, Figure 8 | column 9 «lines 32-35» : reconnecting independent of the nameserver].

5>   Claims 20-22 are rejected under 35 U.S.C § 103(a) as being unpatentable over Polizzi and Guenthner, in view of Brendel et al, U.S Patent No. 5.774.660 ["Brendel"].

6>   As to claims 20-22, Polizzi does not expressly disclose connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications.

7>   Brendel discloses a system whereby a load balancer is responsible for facilitating between a user and a remote application such as a server [Figure 6]. After the connection has been facilitated, the user and the remote application may connect directly with one another allowing subsequent communications from the server to be sent to the user such that the load balancer is bypassed [column 9 «lines 18-21»].

It would have been obvious to one ordinary skill in the art to modify Polizzi's system

to incorporate Brendel's teachings; that is, to enable direct communications between Polizzi's

network interface and agents, bypassing the service broker, to reduce the amount of

bandwidth that must flow through the broker [see Brendel, column 9 «lines 60-64»]. Such a

modification in Polizzi's system would provide substantial improvement in Polizzi's service

broker, as evidenced by the reduction in workload of Brendel's load balancer. Polizzi's service

broker and Brendel's load balancer are analogous as they both responsible for establishing

connections between user and remote applications [see Polizzi, 0021 & Brendel, column 6

«lines 25-26»].

(10) Response to Argument

I.   POLIZZI IN VIEW OF GUENTHNER DISCLOSE THE LIMITATIONS OF CLAIMS 1-19.

Appellant argues that Guenthner fails to disclose: (A) detecting unavailability of the

data source in response to an initial request for the data source by the remote application, (B)

dynamically detecting availability of the data source in response to a subsequent request for

the data source, and (C) reconnecting the data source to the remote application in response to

the subsequent request. Appellant's essential reasoning is that Guenthner fails to recite the

three limitations exactly as they are claimed. However, one of ordinary skill in the art could

have reasonably concluded that Guenthner's teachings were read on Appellant's limitations.

For example, with respect to the first limitation, Guenthner discloses that a client

"browser should detect the failure to reply by a server" [col. 9, lines 19-20]. Guenthner's

teaching reads on Appellant's claimed limitation of detecting the unavailability of the data

source (Guenthner's server) in response to an initial request by the remote application
(Guenthner's browser).

With respect to the second limitation, Guenthner discloses attempting to reconnect to
servers that were previously unavailable to the client browser in response to client requests
[col. 9, lines 29-32]. Guenthner describes the purpose of this functionality as to enable clients
to "access servers that, while previously down or overloaded, are...otherwise available to
handle the request" [col. 9, lines 32-35]. Guenthner's teaching reads on Appellant's claimed
limitation of dynamically detecting availability of the data source in response to a subsequent
request for the data source.

Appellant asserts that Guenthner fails to disclose that the dynamic detection is "in
response to a subsequent request" or that the retries are for the same data source to which the
initial request was first sent [appeal brief, pg. 11, ¶3]. Appellant's arguments presume an
artisan with limited creativity and resourcefulness.

Guenthner discloses marking unavailable servers as "Bad" within a list; the client
browser then attempts to reconnect to those "Bad" servers again later if a client has supplied
an additional request [col. 9, lines 22-32]. Based on Guenthner's teachings, it would have been
reasonable for one of ordinary skill in the art to have inferred that a server on the "Bad" list
had received an initial request from the client and that if a client continues to make requests,
the client would attempt to reconnect to the same server that had been previously marked as
"Bad" by the client.

Essentially, a server that is on the "Bad" list represents a server that had not
responded to an initial attempt but is marked as a server that will be reconnected to once the

client detects that the server is available "so long as the client is still making requests" to that server. Furthermore, while not expressly discussed in Guenthner, it also would have been reasonable to infer that if a subsequent attempt to a "Bad" server was successful, the client would detect that the server was available because "this policy enables the client to access servers" that had been "previously down" but that are now "otherwise available" [see Guenthner, col. 9, lines 26-34].

Finally, with respect to the third limitation, Guenthner implicitly discloses reconnecting to the data source. Guenthner discloses the purpose of the above recited functionality is to enable the client to "access servers" that were previously unavailable [col. 9, lines 32-34]. It would have been reasonable for one of ordinary skill in the art to have inferred that the client browser would have reconnected to the server upon detecting that the previously unavailable server is now available. Such an inference flows naturally from Guenthner's desire to enable clients to "resume using primary servers as soon as possible when the servers are restored" [col. 9, lines 26-28].

II.   POLIZZI AND GUENTHNER IN FURTHER VIEW OF BRENDEL DISCLOSE THE LIMITATIONS OF CLAIMS 20-22.

Appellant argues that Brendel does not disclose the limitation of "connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications." Brendel's client browser reads on Appellant's interface module, Brendel's server reads on the claimed port module and Brendel's load balancer reads on the claimed connection manager. Brendel's load balancer connects the client and the server such that subsequent communications from the server to

the client bypass the load balancer (or are "independent" of the load balancer) [col. 9, lines 18-21].

Appellant's only argument relies upon an unduly narrow interpretation of "subsequent communications." Appellant asserts that the scope of claim 20 includes "subsequent incoming communications in addition to other subsequent communications" [appeal brief, pg. 14, ¶4]. However, Appellant's claim as it is currently written does not mandate this narrow interpretation; Appellant's broadly written claim does not limit the "subsequent communications" to include all subsequent communications between the interface module and the port module.

Appellant admits that Brendel teaches that all subsequent communications from the server to the client browsers bypass the connection manager [appeal brief, pg. 14, ¶4]. Brendel's communications from the server directly to the client and independent of the load balancer qualify as subsequent communications. Brendel's subsequent communications reads on Appellant's broad limitation that "subsequent communications" be independent of the connection manager.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.
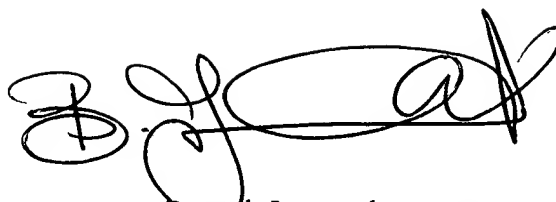
Respectfully submitted,

DC
September 17, 2007

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9/24/7